



## **DEPARTMENT OF THE TREASURY**

### **Office of the Secretary**

#### **31 CFR Part 1**

#### **RIN 1505-AC37**

#### **Privacy Act; Implementation**

**AGENCY:** Office of the Secretary, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury (Treasury) amends this part to partially exempt a new Internal Revenue Service (IRS) system of records entitled ``Treasury/IRS 37.111- Preparer Tax Identification Number Records" from certain provisions of the Privacy Act.

**DATES:** Comments must be received no later than [insert date 30 days after publication in the *Federal Register*].

**ADDRESSES:** Please submit comments to David R. Williams, Director, Return Preparer Office, 1111 Constitution Ave., NW, Washington, DC, 20224. Phone: (202) 927-6428 (not a toll-free number). Comments will be made available for inspection at the IRS Freedom of Information Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 622-5164 (not a toll-free number). You may also submit comments through the Federal rulemaking portal at <http://www.regulations.gov> (follow the instructions for submitting comments).

**FOR FURTHER INFORMATION CONTACT:** David R. Williams, Director, Return Preparer Office, 1111 Constitution Ave., NW, Washington, DC, 20224.

**SUPPLEMENTARY INFORMATION:** Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system is investigatory material compiled for law enforcement purposes. Treasury is hereby giving notice of a proposed rule to exempt "Treasury/IRS 37.111-Preparer Tax Identification Number Records" from certain provisions of the Privacy Act of 1974, pursuant to 5 U.S.C. 552a(k)(2). The proposed exemption pursuant to 5 U.S.C. 552a(k)(2) is from provisions (c)(3), (d)(1)-(4), (e)(1), (e)(4)(G)-(I), and (f) because the system contains investigatory material compiled for law enforcement purposes. The following are the reasons why this system of records maintained by the IRS is exempt pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974:

(1) 5 U.S.C. 552a(c)(3). These provisions of the Privacy Act provide for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at his/her request. The reasons for exempting this system of records from the foregoing provisions are:

- (i) The release of disclosure accounting would put the subject of an investigation on notice that an investigation exists and that such person is the subject of that investigation.
- (ii) Such release would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to which disclosure was made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the alteration or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating the subject and the scope of the investigation and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(d)(1)-(4), (e)(4)(G), (e)(4)(H), and (f). These provisions of the Privacy Act relate to an individual's right to be notified of:

- (i) The existence of records pertaining to such individual,
- (ii) Requirements for identifying an individual who requested access to records,
- (iii) The agency procedures relating to access to and amendment of records,
- (iv) The content of the information contained in such records, and
- (v) The civil remedies available to the individual in the event of an adverse determination by an agency concerning access to or amendment of information contained in record systems.

The reasons for exempting this system of records from the foregoing provisions are that notifying an individual (at the individual's request) of the existence of an investigative file pertaining to such individual or to granting access to an investigative file pertaining to such individual could:

- (i) Interfere with investigative and enforcement proceedings,
- (ii) Deprive co defendants of a right to a fair trial or an impartial adjudication,
- (iii) Constitute an unwarranted invasion of the personal privacy of others,
- (iv) Disclose the identity of confidential sources and reveal confidential information supplied by such sources,
- (v) Disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and

necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting this system of records from the foregoing are as follows:

(i) The IRS will limit the system to those records that are needed for compliance with the provisions of Title 26, 31 U.S.C. 330, and regulations applicable to paid tax return preparers.

However, an exemption from the foregoing is needed because, particularly in the early stages of an investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when first received may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(5) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. The reasons an exemption from this provision has been claimed, are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures.

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

Treasury will publish the notice of the proposed new system of records separately in the *Federal Register*.

Pursuant to Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612, do not apply.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 USC 601-612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities.

#### **List of Subjects in 31 CFR Part 1**

Privacy.

Part 1, subpart C of title 31 of the Code of Federal Regulations is amended as follows:

#### **PART 1--[AMENDED]**

1. The authority citation for part 1 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

**§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.**

(g) \* \* \*

(1) \* \* \*

(viii) \* \* \*

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Number	Name of system
* * *	*
IRS 37.111.....	Preparer Tax Identification Number Records
* * *	* *

Date: October 24, 2011.

Melissa Hartman.

Deputy Assistant Secretary for Privacy, Transparency, and Records.

**Billing Code: 4830-01-P**

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